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File No. O. Extradition/

Legal DEPARTMENT

A BRANCH

Subject:—

The Indian Extradition Act, 1903

Opinions under ——

p-26

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3-11-42

Office of the R.L.A.

The first question raised for consideration is whether the offence under section 457, Indian Penal Code can be treated as an extradition offence for the purpose of the Indian Extradition Act, 1903. An extradition offence is defined in section 2(b) of the Indian Extradition Act to mean any such offence as is described in the First Schedule. The First Schedule includes the offence of lurking house trespass as defined in sections 443 and 444 of the Indian Penal Code and as section 457 provides the punishment for the offence, it must be held that the offence of lurking house trespass, pubishable under the last named section is an extradition offence for the purpose of the Extradition Act.

2. The second question is whether the Magistrate can re-arrest the accused who has apparently been released. Section 10 (1) of the Extradition Act provides that if it appears to any Magistrate of the first class or any Magistrate empowered by the Central Government in this behalf that a person within the local limits of his jurisdiction is accused or suspected of having committed an offence in any State not being a Foreign State and that such person may lawfully be surrendered to such State, or that a warrant may be issued for his arrest under section 7, the Magistrate may, if he thinks fit, issue a warrant for the arrest of such person on such information or complaint and on such evidence as would, in his opinion, justify the issue of a warrant if the offence had been committed within the local limits of his jurisdiction. If the conditions mentioned in this section are present in the case, the Magistrate can re-arrest him and detain him pending receipt of a warrant under section 7. But if, as appears to have happened in this case, the aggregate period of detention so far already exceeds two months, the

Magistrate will have toobtain previous sanction of the Government for his detention under section 10.(See R.L.A.'s U.R. to P.&S.D. No. 2938, dated the 20th March 1940, and No., 4280, dated the 1st May 1940). The previous detention and release on the expiry of two months under the provisions of section 10 will not, however, come in the way of the operation of section 7 and a warrant issued in pursuance of the section may be duly executed in the manner provided therein.

Sd/-
22/3

Remembrancer of Legal Affairs.

U.R. to P.& S.D. No. 2672 dated the 25th March 1941.

SM. 21/4.

The evidence recorded in this case in Gujerati, but from the statement for the extradition of the accused it is clear that the deceased Abdulrehman was murdered by two or three persons and the only question is whether there is prima facie evidence to show Baxeali's complicity in the crime. It appears from th Dewan's letter that Baxeali was an employee of one Khan Sahab Md. Kuli Khan inamdar of Vasna in the State. The no-tax campaign spread to this village and was a blow to Khan Sahab's prestige and power. His two sons moved about in a motor car surrounded by underlings (of whom the accused was one) terrorising people. It appears that in 1939 one Ishwarlal Patel was shot dead while Baxeali was nearby and in spite of the fact that Baxeali was then armed with a gun, he was not arrested. The local police showed no zeal in investigating the crime, and when an Inspector from British India was deputed to investigate, all manner of obstacles were put in his way. The Inamdar's servants were also suspected of being concerned in two other crimes, a highway robbery, and house-breaking and theft. It appears that the deceased Abdulrehman was also in the employ of the Khan Saheb, and was in the know of all the activities of Baxeali and his colleagues. He thenleft service and decided to follow the avocation of a weaver. When the State announced a reward of Rs. 500/- for information leading to the detection of the miscreants concerned in the crimes aforesaid, Baxeali probably feared that Abdulrehaman might be tempted to disclose what he knew to the State Authorities. He repeatedly sent people to Abdulrehman with offers of a job as talathi, and it is reasonable to infer that on Abdulrehaman's rejection of the offer his suspicions were confirmed. It is reasonable to infer also that he and his friends came to the

conclusion that in order effectively to prevent any disclosure, the man must be murdered. Another circumstance, deposed to by the deaceased's mother (Ex.1) corroborates this: a daughter of the accused Chandu's borther was betrothed to the deceased, but in spite of repeated demands, Chandu and his brother refused to perform the contract. It would, therefore, appear that the accused had a fairly strong motive for the murder. Shaikh Ahmed Sheikh Banu, one of the weavers employed by Chandu, a neighbour of the deceased, has deposed that on the day of the murder, the weavers were dishbharged early on the pretext that looms were not in order; he (i.e. Chandu) appears to have been bribed to do this, so as to secure that there would be no witnesses to the crime. As the witness was leaving, he saw Lal, Gafur and another Pathan. He also saw Baxeali standing on the otla of the house opposite to the deceased's. The first named three Pathans were then seen coming out of the house, one of them bearing a bundle containing apparently the body of the deceased. Baxeali was later seen moving with Lala. He was also seen shouting that the murders had been arrested, which would indicate that he was interested in diverting, from himself and his companions, any suspicion of being concerned in the offence It appears that the testimony of Shaikh Ahmed is corroborated in some material details by Sheikh Mahomedmia, Ex..3 . The fact that Baxeali was present in the immediate vicinity of the scene of offence in the circumstances stated suggests the legitimate inference that he had instigated the murder and was directing its execution. Although the communication from the Dewan is no evidence in the case against the accused, it explains the setting of the case and reading the summary of the evidence in the statement for the extradition in its proper light it is clear that there is a prima facie case for the surrender of the accused

The facts of this case appear to be as follows:- One Paulo dos Remedios Gomes, convicted of an offence committed in Portuguese India and sentenced to suffer simple imprisonment for five months, is alleged to have escaped from the jail in Portuguese India and fled to British India. He was arrested by the Bandra Police and i awaiting trial for offences (committed in British India) under sections 224 and 332 of the Indian Penal Code. A requisition for his surrender under section 9 of the extradition Act has been received, and the proceedings under section 3 are being taken; the enquiry before the Magistrate is not yet complete and no order has been p passed, as yet, under section 3(8). The question for consideration is whether Government sanction is necessary under section 10(3) of the Indian Extradition Act, 1903, for his further detention. That sub-section provides:-

> "A person arrested on a warrant issued under this section shall not, without the special sanction of the Central Government, be detained more than two months, unless within such period the Magistrate receives an order made with reference to such person in accordance with the prodedure prescribed by section 9, or a warrant for the arrest of such person under section 7."

The functions of the Central Govt. under the sub-section have been entrusted to Provincial Govt. (see Govt. of India Notfn. 67-X dated 1/4/1938) . It only applies in the case of persons arrested upon a warrant under section 10(2) of that Act. It appears that the accused in this case was arrested on 12-2-1941 under such warrant. And

and as no warrant has been received under sec.7 and no order passed under section 3(8) with reference to the requisition under section 9 received from the Portuguese Government, the accused cannot be detained in jail for more than 2months. The sanction under section 10(3) ought to have been obtained before the expiration of 2 months from the date of arrest. (See R.L.A.'s U.R. to P.& S.D. No. 2935 dated the 20th March 1940).

Sd/-
26/4

A.L.R.

Re 'A' I should like to know why the reference is to sub-section (8) and whether an order under sub-section (1) of section (3) will not suffice to take away the case from the limitation of time in sec. 10 (3)

Are there no previous opinions on this point?

B does not seem to be the point on which the present reference is made to us. Pl. see the concluding portion of para 4 at p.34 ante.

Sd/-
26/4/41

P.A.

There appears to be no ruling of the R.L.A. on the point at 'A'.

The words "an ordermade with reference to

PSM. 21/4.

Office of the R.L.A.

One Paulo dos Ramedios Gomes, convicted of an offence committed in Portuguese Indian and sentenced to suffer simple imprisonment for 5 months, is alleged to have escaped from jail in Portuguese India, and taken refuge in British India. He was arrested by the Bandra Police and is awaiting trial for offences (committed in British India) under sections 224 and 332 of the Indian Penal Code. A requisition for his surrender under section 9 of the Extradition Act has been received and proceedings under section 3 are being taken These proceedings are still incomplete and no order has yet been passed under section 7(8).

2. Gomes has been held on evidence to be a Portuguese subject. (See the report of the Additional District Magistrate, Bombay Suburban District at p. 1 of the ancillary file). It can be gleaned from Government of India's telegram No. 106-1-A, dated the 7th January 1901, underlying G.R.P.D.No. 1952, dated the 12th March 1901 at that an understanding as toextradition exists between the British and Portuguese Governments in India whereby the former has to surrender to the latter all Asiatic criminals who have committed offence in Portuguese India, except British Indian subjects and subjects of Native States, and the latter has to surrender to the former all Asiatic offenders, except Portuguese subjects who have committed offences inBritish India or Native States. On the assumption that this understanding is still in force, it is open to Government to follow the procedure laid down in the Extradition Act, for the purpose of extraditing Gomes.

3. The circumstances under which Gomes was arrested at Bandra are not clear from the letter of the Commissioner of Police at p. 29 ante. If he was arrested under the seventh clause of section 54 of the Criminal Procedure Code he may be detained under the orders of a Magistrate in the same manner and subject to the same

restrictions as a person arrested on a warrant issued by such Magistrate. (See section 23 of the Extradition Act). If, on the other hand, he was arrested under a warrant from the Magistrate under section 10(1) of the Extradition Act, his detention would be governed by section 10(3) of the said Act. Section 10(3) provides that a person arrested on a warrant under this section shall not without the special sanction of Government, be detained more than two months, unless the Magistrate within such period receives an order made with reference to such person in accordance with the procedure prescribed by section 9 or a warrant for the arrest of such person under section 7. The question for consideration is whether in this case the sanction of Government is necessary for the detention of the accused for a period exceeding two months. Such sanction is not necessary if the Magistrate receives within two months of the arrest either a warrant under section 7 or an order passed in accordance with the procedure prescribed by section 9. No warrant under section 7 has been received by the Magistrate but it appears that in February last a requisition was received by Government from the Government of Portuguese India and that on 11th March Government passed orders under section 9 read with section 3(1) directing the Magistrate to hold an enquiry (p.27 ante). This order having been received by the Magistrate within two months of the arrest, no sanction of Government is necessary under section 10(3) of the Extradition Act.

Yd/—— 8/5
Remembrancer of Legal Affairs.

U.O.to the P.& G.D.,No.4251 dated the 9th May 1941.

B.K.S. 24/4

Office of the R.L.A.

The first question is whether a prima facie case is established against the offender in respect of the offence of cheating by personation under section 419 of the Indian Penal Code. In order to bring home a charge under this section it is necessary to prove that the accused cheated the complainant and that he did so by pretending to be some other person or by representing that he is a person other than the person he really is. (Vide Ratanlal's Law of Crimes, 15th Edition p.1058). The Police Sub-Inspector, Jalalpore, in his complaint before the First Class Magistrate, Jalalpore, states that the accused Daji Valji applied to the Collector of Surat for a certificate showing that he was the lawful child of one Lala Rama who is at present residing in New Zealand. It was found that Daji's father (One Vala Nana) had never been to New Zealand and that Lala Rama who is residing in New Zealand is not his father but a distant relative of his. It was further found that the said Lala Rama of New Zealand had no son at all. It appears that there are two persons by name Lala Rama - one originally of Poshla Falia -Harodi who is at present residing in New Zealand and the other who was residing at Pada Falia-Harodi and is now dead. The accused produced a birth extract dated the 5th April 1926 showing that he was Dahya Lala son of this second Lala Rama referring to him as the person at present residing in New Zealand.

3. The evidence of the Police Patel (p. 31, Motamian the village servant Lalbo (p. 29) and the stamp vendor (p.33) supports the case of personation set out above. But according to the statement of Bai Mukhi (p.27) who is a resident of Poshla Falia and a neighbour of Bai Motli the wife of the New Zealand resident, the accused Daji (Dahya) son of Bai Nandi and Vala Nana was taken in adoption by Bai Motli and is living with her.

Presumably the adoption must be with the ex consent of her husband Lala Rama of New Zealand, who has no son, but only a daughter, Rani. If the fact of adoption be true, the accused can validly assert that he is the son of Lala Rama of New Zealand and the charge of cheating by personation would in that event go by the board. Though the accused's production of the Birth certificate exm of Dahya, son of Lala Rama of Pada Falia as his own birth certificate would doubtless constitute cheating, it would nevertheless not lay him open to the charge of cheating by personation unless there is prima facie evidence to show that he is neither the natural nor the adopted son of Lala Rama of New Zealand. It would therefore be advisable, before proceeding further, to ascertain whether or not the accused was the adopted son of Lala Rama of New Zealand. This can be done by examining Rai Hotli, Rai Ram', Vala Rama and Rai Rani who presumably would be conversant with the true facts.

3. The next question is whether action under the Fugitive Offenders Act,1881 (44 and 45 Vict. C.69) will have to be taken by the Central Government. As pointed out in para. 3 of H.L.A 's opinion No.840 dated the 29th January 1941; the powers under section 10(2) of the Extradition Act not having been entrusted to the Provincial Government action in this case cannot be taken by the Provincial Government. Sub-para. 4 of section 29 of the Fugitive Offenders Act requires all warrants and depositions, and copies thereof, to be duly authenticated in manner provided for the time being by law i.e. if they purport to be signed by or authenticated by the signature of a Magistrate they are authenticated and sealed with the official seal inter alia of a Governor of a British possession. It is in accordance with these provisions of law that by para.3(2) of G.H.P.O. No.5224 dated the 28th October 1927 Government

has directed that warrants etc. must be authenticated by being sealed with the official seal of Secretary, Political Department. Under section 19(a) of the Extradition Act powers of "Governors of British possessions" are powers of the Central Government. Consequently as stated by Deputy Secretary, Political and Services Department in para. 3 of his note the warrants, depositions and exhibits will have to be forwarded to the Central Government.

rd/ —— 7/7
Remembrancer of Legal Affairs.
rd/——— 7/7

U.O. to P.&S.D. No.5096 dated the 10th July 1941.

B.K.S. 24/4.

Office of the R.L.A.

The accused Harising Pragji is proposed to be extradited for offences under sections 395, 396, 397 and 307 read with section 100 of the Indian Penal Code in respect of a dacoity with murder committed by a gang at Umri in the Sabarkantha Agency on 27th January 1941. The R.L.A. is requested to advise whether a prima facie case against Harising is made out from the evidence (slip A). The evidence discloses prima facie that a dacoity was committed as alleged. This the accused also does not dispute. No part of the evidence, however, suggests that Harising was present at the dacoity. He is regarded as an absent abettor and hence the charge is levelled under section 109 instead of section 114 of the Code. The acts of abetment imputed to Harising are (1) that he conspired with the gang of dacoits and towards the commission of the Umri dacoity allowed them a camping base in his fields at Dhoyni in Ahmedabad District, (2) assisted in watching gun repair work done in his fields by a repairer for the dacoits, (3) secured 40 cartridges from a Viramgam shop using the Police Patel of Rudatal, who held a gun license, as a benamidar purchaser for the purpose, (4) supplied the ammunition to the dacoits at their Dhoyni camp for use at the contemplated Umri dacoity, (5) and did all the above on the stipulation that he should receive a share in the loot from the Umri dacoity. The imputations are based on evidence as follows :-

(1) The confession of a co-accused Singa Umar (Ex.13/1 at pages 45 to 52) who fully implicates Harising in all detail as above;

(2) The statement of the Police Patel of Rudatal

(Ex.11 at page 39) who corroborates the bonnat purchase of cartridges at Viramgaum on 25th December 1940 and delivery thereof to Harising;

(3) The statement of the Viramgaum dealer of ammunition at page 35 who corroborates the fact of the sale and avers that the make and type of the cartridges sold are the same as of those found actually used in the dacoity;

(4) The statement of the repairer (Ex. 20 at page 149) who says that Harising caused the guns to be brought for repairs at his Bhoyni field;

(5) The statement of Kanji at page 153 who confirms the gun repair incident and speaks to the gang of dacoits lying in camp at the time in Harising's fields.

3. The evidence referred to above is prima facie sufficient to found a charge against Harising of conspiracy and abetment in respect of the said dacoity. The accused says that the evidence is prompted by the enmity of the Police Patel of Sudatel (see para.6 of his statement at page 11). There is no reason to disbelieve the evidence prima facie as suggested by the accused. The statement of the Police Patel of Sudatel does not appear wanton or inspired by enmity as it would render the Patel himself liable to be prosecuted under the Arms Act in respect of the illegal sale of ammunition between ~~him~~ him and Harising and liable also to lose his gun license.

3. The next question referred to the A.L.A. is whether the extradition asked for in this case can be granted. It appears from the letter of the Political Agent, Sabarkantha Agency, at page 85, that no charge is levelled against the accused in respect of his conspiracy in the dacoity and his consequent liability for the principal offence of dacoity by virtue of section 34 of the Indian Penal Code (though such a charge is strongly

indicated from the facts and evidence in the case and would probably justify extradition). The question of extraditing Harising for the principal offence which was committed at Umri does not, therefore, arise. The offence for which extradition is sought is abetment of dacoity, etc., under section 109 of the Code, it is true that a warrant for extradition would lie under section 7 of the Extradition Act for the abetment of an extraditable offence in view of section 13 of the Act. but the offence of abetment for such purpose must be one committed in the territories of the non-foreign State concerned as required by section 7 of the Act. The acts of abetment imputed in the present case are all committed at Bhoyni in British India. No warrant for extradition for the abetment committed in British India is, therefore, competent under section 7 of the Extradition Act. The warrant issued may, therefore. be directed to be cancelled and the accused Harising ordered to be discharged under section 15 of the Act.

Yd/—— 14/8
Remembrancer of Legal Affairs.
Yd/—— 14/8/41

U.N. to P. & S. D., No. 7328, dated the 16th August 1941.
B.K.S. 24/4

R.T.No.10050
30-10-41.

Submitted.

Pl. see paras.1 and 2 of R.L.A's opinion No.5996 dt.10.7.1941. The R.L.A. had advised that in order to consider whether Daji Valji had committed the offence of cheating by personation within the meaning of sect.419, I.P.C., it was necessary to ascertain whether or not Daji was the adopted son of Lala Rama of New Zealand by examining Bai Motli, Bai Mandi and other witnesses. This evidence has now been collected. Both the Magistrate who recorded the evidence and the D.M., Surat, think that there was no adoption of Daji Valji at all and that the theory of adoption has been raised up now to save the skin of Daji. Before the Govt. of India is approached in the matter, the R.L.A. is requested to consider this evidence.

2. There is no documentary evidence to show that Daji was adopted by Bai Motli, wife of Lala Rama of New Zealand. The parties are by caste 'Kolis' of Gujerat. Under the Hindu Law a wife cannot adopt a son to her husband during her husband's lifetime except with his express consent (Mulla's Hindu Law, 9th Edn. p.518). Bai Motli in her deposition states that she had not performed any ceremonies at the time of adoption and that none of her neighbours is aware of that fact; that she had obtained the consent of her husband to the adoption by letter which is not available; that Daji's mother had also obtained similar consent of her husband for giving him away in

adoption; but this letter also is not produced; and that she garlanded Daji and handed over a coconut to him. Bai Nandi (mother of Daji) corroborates these facts and adds that at the time of garlanding there were no other persons except the two sisters and Daji; that Daji had obtained a letter of consent from his father but the same is not available. The next statement is of Bai Pani, daughter of Lala Rama. She had not attended the alleged ceremony but says she came to know of the adoption when she had gone to her mother's place 10-15 days afterwards. Next, Bai Nanki, a neighbour of Bai Nandi, states that she is not aware of the adoption of Daji by Bai Motli. Vala Jogi, ~~a~~ brother of Bai Nandi, refers to the fact of garlanding and states that about 15-17 persons dined at Bai Motli's place that day. Next some of the old residents of the village state that in their community it is customary to inform all the relatives and family members if an adoption is to take place and to declare the adoption in the presence of four or five persons (witnesses). The next witness, Soma Daji, a neighbour of Bai Motli, says that he heard of the adoption in his house, but was not a witness to the adoption.

Office of the D.L.A.

Cheating by personation (section 419, Indian Penal Code is punishable with simple or rigorous imprisonment for 3 years and is therefore an extraditable offence attracting the provisions of the Fugitive Offenders Act, 1881. It would appear from the evidence recorded by the First Class Magistrate that Bajt alias Dahya was neither the natural nor the adopted son of Lala Rama of New Zealand and that a prima facie case has been made out under section 419, Indian Penal Code.

2. Before addressing the Government of India the details of the procedure will have to be carefully checked with the precedents (see pages 42 to 47 *ante*). It is not correct to assume that the Remembrancer of Legal Affairs has "certified that the extradition proceedings are complete in this case and that the procedure proposed is in order" as stated in paragraph 4 at page 120 ante, for all that the D.L.A. has so far stated in his opinions at pages 45-46 and 65-66 ante relates to the establishment of a prima facie case on the evidence available in these papers and to the authority which is to exercise the powers under section 10(a) of the Indian Extradition Act, 1903.

3. The general law dealing with the surrender of fugitive offenders between different parts of the British Dominions is the Fugitive Offenders Act, 1881. As regards India, this Act is supplemented by section 10 of the Indian Extradition Act, 1903. The procedure to be followed is that in the first instance a charge should be preferred before a Magistrate of the class specified in section 10(a) of the Indian Extradition Act, 1903, i.e. before a First Class Magistrate or some Magistrate specially empowered in that behalf. Then evidence should

be adduced and carefully recorded under section 512 of the Code of Criminal Procedure, 1898 and in exercise of the power conferred by section 29 of the Fugitive Offenders Act, 1881, and should establish a prima facie case that the offence has been committed by the fugitive offender. The evidence recorded must show that the accused is a fugitive, that the facts on which he is charged constitute an offence according to the law of British India and that such offence falls within section 19(d) of the Indian Extradition Act, 1903. (See Maddman's Law of Extradition, pages 80-81). It is presumed that in this case evidence has been recorded regarding the fact that the accused is a fugitive.

M/——— 1/12
Remembrancer of Legal Affairs.

U.O. to P.& S.D., No. 10325, dated the 1st December 1911

H.H.G. 24/4